

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHAWN DRUMGOLD,)	C.A. NO. 04-11193NG
Plaintiff)	
)	
v)	
)	
TIMOTHY CALLAHAN, ET AL.)	
Defendant(s))	
)	

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MEMORANDUM TO EXCLUDE THE
MOTION OF THE DISTRICT ATTORNEY AND THE SUPERIOR COURT'S ORDER
GRANTING A NEW TRIAL**

Rather than press for the admission of the Memorandum filed by the District Attorney or the transcript of the hearing when Judge Rouse allowed the Motion for New Trial, the Plaintiff moves this Court, pursuant to Fed.R.Evid. 201(d), to take judicial notice of the following facts.

1. On July 29, 2003 a hearing was held on Drumgold's Motion for New Trial in the Suffolk Superior Court before Judge Rouse of the Suffolk Superior Court. The Hearing lasted until August 6, 2003.
2. On November 6, 2003 Judge Rouse allowed the Defendant's Motion for New Trial which had the legal effect of reversing the conviction for first degree murder and allowing the Commonwealth of Massachusetts to retry Drumgold for the murder of Tiffany Moore.
3. On November 6, 2003 the Suffolk county District Attorney entered a Nolle Prosequi. That document was a formal notice by the Suffolk County District Attorney's office that it would not retry Drumgold for the murder of Tiffany Moore and that it was no longer seeking to convict him for the murder of Tiffany Moore.

4. Drumgold was in prison from the date of his arrest on August 29, 1988 until his release on November 6, 2003.
5. Drumgold was released from incarceration on November 6, 2003.

Plaintiff also intends to introduce the docket in Commonwealth v. Drumgold and the Motion to Nolle Pros filed by Commonwealth.

The jury is entitled to be aware of those procedural background facts to this case. Plaintiff is willing to avoid any potential confusion which may arise from submitting the legal analysis and arguments of the District Attorney or Judge Rouse.

Respectfully submitted,

By His Attorneys,

/s/ Michael Reilly

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